

NOT TO BE PUBLISHED

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Shasta)

THE PEOPLE,  
  
Plaintiff and Respondent,  
  
v.  
  
BEN DEAN BARTEE, SR.,  
  
Defendant and Appellant.

C063387  
  
(Super. Ct. No.  
08F8061)

Facing a consolidated information containing nearly 200 counts (along with a codefendant who is not a party to this appeal), defendant Ben Bartee entered a plea of no contest to six counts of second degree burglary and one count of the unauthorized use of personal identification to obtain credit, and admitted serving three prior prison terms. In exchange, he would received a stipulated term of nine years in state prison. In sentencing defendant in accordance with the plea, the court

imposed seven assessments of \$30 each for court facilities.  
(Gov. Code, § 70373 ["§ 70373"].)

Defendant's sole contention on appeal is that the trial court could not impose these assessments because he committed his crimes before the effective date of section 70373, which he argues does not contemplate retroactive application of its provisions to crimes committed before its enactment. As he acknowledges in the last line of his reply brief, we rejected this argument in *People v. Castillo* (2010) 182 Cal.App.4th 1410 (filed shortly before the reply brief). While he "respectfully disagrees with this Court's reasoning," he does not provide any cogent reason to depart from that holding. We therefore adhere to our decision.

This court's miscellaneous order number 2010-002, filed March 16, 2010, deems defendant to have also raised the issue (without additional briefing) of whether the January 2010 amendments to Penal Code section 4019 apply to his pending case retroactively and thereby entitle him to additional presentence conduct credits. The Supreme Court has granted review to resolve a split in authority on the question. (*People v. Brown* (2010) 182 Cal.App.4th 1354, review granted June 9, 2010 (S181963) [giving retroactive effect to amendments]; accord *People v. Landon* (2010) 183 Cal.App.4th 1096, review granted June 23, 2010 (S182808); *People v. House* (2010) 183 Cal.App.4th 1049, review granted June 23, 2010 (S182183); *contra*, *People v. Rodriguez* (2010) 182 Cal.App.4th 535, review granted April 13, 2010 (S181808).) The remaining published cases (none of which

is final) are divided on the issue. (*People v. Bacon* (2010) 18-Cal.App.4th ---; *People v. Keating* (2010) 185 Cal.App.4th 364, pet. for review filed July 12, 2010 (S184354); *People v. Pelayo* (2010) 184 Cal.App.4th 481, pet. for review filed June 15, 2010 (S183552); *People v. Norton* (2010) 184 Cal.App.4th 408, pet. for review filed June 7, 2010 (S183260); *contra, People v. Eusebio* (2010) 185 Cal.App.4th 900; *People v. Hopkins* (2010) 184 Cal.App.4th 615, pet. for review filed June 21, 2010 (S183724); *People v. Otubuah* (2010) 184 Cal.App.4th 422, time for granting review on court's own motion extended to Sept. 8, 2010 (S184314).)

Pending a determinative resolution of the issue, we adhere to the conclusion that the amendments apply to all appeals that were pending at the time of their enactment. (Cf. *In re Estrada* (1965) 63 Cal.2d 740, 745 [amendments that lessened punishment for crime apply to acts committed before passage, provided judgment is not final]; *People v. Doganiere* (1978) 86 Cal.App.3d 237; *People v. Hunter* (1977) 68 Cal.App.3d 389, 393 [both of which apply *Estrada* to amendments involving custody credits].) Defendant does not appear to be subject to registration as a sex offender, or have present or prior convictions for violent or "serious" felonies (Pen. Code, § 667.5, subd. (b); § 1192.7, subd. (c)).<sup>1</sup> Defendant is therefore entitled to accrue work and

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<sup>1</sup> Defendant waived the preparation of a probation report, so we do not have an available summary of his past offenses in the record. However, none of the prior prison terms that he admitted involved a violent or serious felony, and we have

conduct credits at a rate of two days for every four days of actual custody served (*id.*, § 4019, subds. (b)(1) & (c)(1)), with the result that a period of four days is deemed served for every two-day period of actual custody (*id.*, subd. (f)). With 100 days of actual custody, defendant is now entitled to 100 days of conduct credits rather than 50. We will direct the trial court to amend the abstract of decision accordingly, unless there is a disqualifying conviction dehors the appellate record.

#### DISPOSITION

The judgment is affirmed. Unless there is a disqualifying conviction dehors the present appellate record, the trial court shall issue an amended abstract of decision reflecting a total award of 100 days of conduct credits, and forward a copy to the Department of Corrections and Rehabilitation.

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BLEASE, Acting P. J.

We concur:

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RAYE, J.

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HULL, J.

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received a copy of appellate counsel's letter to the trial court requesting additional presentence conduct credits pursuant to the amended statute (which we presume counsel would not request if defendant did not qualify).